

IV. Optional Technical Assistance Checklist¹ – Eligibility Requirements found in PL 108-446

PL 108-446	Description of Changes
20 U.S.C. 1411. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.	
(e) STATE-LEVEL ACTIVITIES- (1) STATE ADMINISTRATION- (C) CERTIFICATION- Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A) are current.	Requires the State to certify to the Secretary that the arrangements for responsibility for services under 20 U.S.C. 1412(a)(12)(A) are current before the State can expend funds under 20 U.S.C. 1411(e). [State Administration]
(5) REPORT ON USE OF FUNDS- As part of the information required to be submitted to the Secretary under 20 U.S.C. 1412, each State shall annually describe how amounts under this section--	Similar to prior law 20 U.S.C. 1411(f)(5).
(A) will be used to meet the requirements of this title; and	
(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.	
20 U.S.C. 1412. STATE ELIGIBILITY.	
(a) IN GENERAL- A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:	States must submit a plan that includes assurances that they meet each of the 20 U.S.C. 1412 conditions.
(1) FREE APPROPRIATE PUBLIC EDUCATION- (A) IN GENERAL- A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.	No substantive change.
(B) LIMITATION- The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--	No substantive change.
(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and	
(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--	
(l) were not actually identified as being a child with a disability under 20 U.S.C. 1401; or	

¹ This checklist is provided to assist States in the completion of OMB Information Collection 1820-0030. Use of the checklist is optional.

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(II) did not have an individualized education program under this part.	
(C) STATE FLEXIBILITY- A State that provides early intervention services in accordance with part C to a child who is eligible for services under 20 U.S.C. 1419, is not required to provide such child with a free appropriate public education.	New provision. States are not required to provide FAPE to children who are eligible for Part B but are receiving Part C services.
(2) FULL EDUCATIONAL OPPORTUNITY GOAL- The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.	No substantive change.
(3) CHILD FIND- (A) IN GENERAL- All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.	No substantive change.
(B) CONSTRUCTION- Nothing in this title requires that children be classified by their disability so long as each child who has a disability listed in 20 U.S.C. 1401 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.	No substantive change.
(4) INDIVIDUALIZED EDUCATION PROGRAM- An individualized education program, or an individualized family service plan that meets the requirements of 20 U.S.C. 1436(d), is developed, reviewed, and revised for each child with a disability in accordance with 20 U.S.C. 1414(d).	No substantive change.
(5) LEAST RESTRICTIVE ENVIRONMENT- (A) IN GENERAL- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.	No substantive change.
(B) ADDITIONAL REQUIREMENT- (i) IN GENERAL- A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.	Revises (B) to say that State funding formulas shall not result in violations of LRE and States shall not use a funding formula based on type of setting in which child receives services that will result in failure to provide FAPE.

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(ii) ASSURANCE- If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.	
(6) PROCEDURAL SAFEGUARDS-	No substantive change.
(A) IN GENERAL- Children with disabilities and their parents are afforded the procedural safeguards required by 20 U.S.C. 1415.	
(B) ADDITIONAL PROCEDURAL SAFEGUARDS- Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.	
(7) EVALUATION- Children with disabilities are evaluated in accordance with subsections (a) through (c) of 20 U.S.C. 1414.	No substantive change.
(8) CONFIDENTIALITY- Agencies in the State comply with 20 U.S.C. 1417(c) (relating to the confidentiality of records and information).	No substantive change.
(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS- Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with 20 U.S.C. 1437(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 20 U.S.C. 1414(d)(2)(B) and 1436(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under 20 U.S.C. 1435(a)(10).	No substantive change.
(10) CHILDREN IN PRIVATE SCHOOLS-	Adds a reference to private schools located in the LEA when calculating proportional share.. Adds requirements to consult about thorough and complete child find; use State and local funds to supplement and not supplant proportionate amount; and keep records on numbers of children evaluated and number found eligible. Adds additional consultation requirements on child find, on determination of proportionate share, on consultation process, and on how services will be delivered. Requires LEA to obtain written affirmation from private
(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS-	
(i) IN GENERAL- To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under	

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subsection (f):	school representatives that timely and meaningful consultation occurred. Gives private school representatives the right to complain to the SEA and, if dissatisfied with the SEA response, to appeal to the Secretary. Adds requirement that services be 'secular, neutral and nonideological' and other requirements.
(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.	
(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.	
(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.	
(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.	
(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.	See above.
(ii) CHILD FIND REQUIREMENT-	
(I) IN GENERAL- The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.	
(II) EQUITABLE PARTICIPATION- The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.	
(III) ACTIVITIES- In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.	
(IV) COST- The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).	
(V) COMPLETION PERIOD- Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational	

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agency.	
(iii) CONSULTATION- To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--	
(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;	See above.
(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;	
(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;	
(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and	
(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.	
(iv) WRITTEN AFFIRMATION- When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.	See above.
(v) COMPLIANCE- (I) N GENERAL- A private school official shall have the right to submit a complaint to the	

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State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.	
(II) PROCEDURE- If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.	
(vi) PROVISION OF EQUITABLE SERVICES- (I) DIRECTLY OR THROUGH CONTRACTS- The provision of services pursuant to this subparagraph shall be provided--	
(aa) by employees of a public agency; or	
(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.	
(II) SECULAR, NEUTRAL, NONIDEOLOGICAL- Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.	
(vii) PUBLIC CONTROL OF FUNDS- The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.	
(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES- (i) IN GENERAL- Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education	

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and related services to all children with disabilities within such State.	
(ii) STANDARDS- In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.	
(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY-	
(i) IN GENERAL- Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.	
(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT- If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.	
(iii) LIMITATION ON REIMBURSEMENT- The cost of reimbursement described in clause (ii) may be reduced or denied--	No substantive change.
(I) if--	
(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or	
(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);	
(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 20 U.S.C. 1415(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for	

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such evaluation; or	Separates out the exceptions to the reduction in reimbursements that apply automatically if found and those that are discretionary on the part of a court or hearing officer.
(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.	
(iv) EXCEPTION- Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--	
(I) shall not be reduced or denied for failure to provide such notice if--	
(aa) the school prevented the parent from providing such notice;	
(bb) the parents had not received notice, pursuant to 20 U.S.C. 1415, of the notice requirement in clause (iii)(I); or	
(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and	
(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--	
(aa) the parent is illiterate or cannot write in English; or	
(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.	
(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION-	Adds requirement that SEA carry out IDEA with regard to homeless children in a manner consistent with the McKinney-Vento Act. Link to the McKinney-Vento Act is: http://www.naehcy.org/mvact.doc
(A) IN GENERAL- The State educational agency is responsible for ensuring that--	
(i) the requirements of this part are met;	
(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency--	
(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and	
(II) meet the educational standards of the State educational agency; and	
(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.	
(B) LIMITATION- Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.	
(C) EXCEPTION- Notwithstanding subparagraphs (A) and (B), the Governor (or another individual	

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pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.	
(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES- (A) ESTABLISHING RESPONSIBILITY FOR SERVICES- The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:	No substantive change.
(i) AGENCY FINANCIAL RESPONSIBILITY- An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).	
(ii) CONDITIONS AND TERMS OF REIMBURSEMENT- The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.	
(iii) INTERAGENCY DISPUTES- Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.	
(iv) COORDINATION OF SERVICES PROCEDURES- Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).	
(B) OBLIGATION OF PUBLIC AGENCY- (i) IN GENERAL- If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 20 U.S.C. 1401(1) relating to assistive technology devices, 20 U.S.C. 1401(2) relating to assistive technology services, 20 U.S.C. 1401(26) relating to related services, 20 U.S.C. 1401(33) relating to supplementary aids	

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and services, and 20 U.S.C. 1401(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).	
(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY- If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).	
(C) SPECIAL RULE- The requirements of subparagraph (A) may be met through--	
(i) State statute or regulation;	
(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or	Adds a requirement that if the State assigns responsibility for services through a method other than a statute, regulation or signed agreement, that the Secretary approve that other method.
(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.	
(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY- The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.	No substantive change.
(14) PERSONNEL QUALIFICATIONS-	[NOTE: CSPD eliminated (prior 20 U.S.C. 1412(a)(14))] Adds requirement that qualifications ensure that personnel <i>have the content knowledge and skills to serve children with disabilities</i> .
(A) IN GENERAL- The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.	
(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS- The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--	Provides that related services and paraprofessional qualifications must be consistent with State-recognized certification, licensing, registration or other comparable
(i) are consistent with any State-approved or State-recognized certification, licensing, registration,	

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or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;	requirements that apply to the profession or discipline and that those personnel have not had certification or licensure requirements waived on a temporary, emergency or provisional basis and allows paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation or written policy to be used to assist in the provision of services.
(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and	
(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.	
(C) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS- The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.	New requirement that each special education teacher meet the definition of "highly qualified" [in 20 U.S.C. 1401(10)] by the deadline established in 1119(a)(2) [by the end of the 2005-2006 school year].
(D) POLICY- In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.	New policy requirement providing that States shall have a policy that includes a requirement that LEAs take measurable steps to recruit, hire, retain and train highly-qualified personnel.
(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.	Provides that failure of personnel to meet these standards does not create a right of action or prevent a complaint to the SEA about staff qualifications. [NOTE: Policy on shortages and highest requirements language are deleted (prior 20 U.S.C. 1412(a)(15)(B)(ii) and (C))]
(15) PERFORMANCE GOALS AND INDICATORS- The State--	Revised to connect more closely with performance goals under ESEA, to require annual, as opposed to biannual reporting to the Secretary and the public, and to delete reference to modifications to a State Improvement Plan under prior law.
(A) has established goals for the performance of children with disabilities in the State that--	
(i) promote the purposes of this title, as stated in 20 U.S.C. 1400(d);	
(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;	
(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and	
(iv) are consistent, to the extent appropriate, with any other goals and standards for children	

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established by the State;	
(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and	
(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.	
(16) PARTICIPATION IN ASSESSMENTS-	Revised to specify that all children with disabilities participate in all general State- and district-wide assessment programs, and that States have guidelines on the provision of appropriate accommodations. Other changes to clarify that alternate assessments be aligned with State's challenging academic content and achievement standards, and to incorporate alternate assessments aligned to alternate achievement standards as permitted under ESEA.
(A) IN GENERAL- All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.	
(B) ACCOMMODATION GUIDELINES- The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.	
(C) ALTERNATE ASSESSMENTS-	
(i) IN GENERAL- The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.	
(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS- The guidelines under clause (i) shall provide for alternate assessments that--	
(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and	
(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.	
(iii) CONDUCT OF ALTERNATE ASSESSMENTS- The State conducts the alternate assessments described in this subparagraph.	

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<p>(D) REPORTS- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:</p> <p>(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.</p> <p>(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).</p> <p>(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).</p> <p>(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.</p> <p>(E) UNIVERSAL DESIGN- The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.</p>	
<p>(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS-</p> <p>(A) EXPENDITURES- Funds paid to a State under this part will be expended in accordance with all the provisions of this part.</p> <p>(B) PROHIBITION AGAINST COMMINGLING- Funds paid to a State under this part will not be commingled with State funds.</p> <p>(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY- Except as provided in 20 U.S.C. 1413, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.</p>	No substantive change.

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<p>(18) MAINTENANCE OF STATE FINANCIAL SUPPORT-</p> <p>(A) IN GENERAL- The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.</p> <p>(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT- The Secretary shall reduce the allocation of funds under 20 U.S.C. 1411 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.</p> <p>(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES- The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that--</p> <p>(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or</p> <p>(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.</p> <p>(D) SUBSEQUENT YEARS- If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.</p>	<p>No substantive change except for deleting prior 20 U.S.C. 1412(a)(18)(e) regarding regulations.</p>
<p>(19) PUBLIC PARTICIPATION- Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.</p>	
<p>(20) RULE OF CONSTRUCTION- In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.</p>	
<p>(21) STATE ADVISORY PANEL-</p> <p>(A) IN GENERAL- The State has established and maintains an advisory panel for the purpose of</p>	

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providing policy guidance with respect to special education and related services for children with disabilities in the State.	from birth through age 26, and adds new membership requirements for State and local officials who carry out the McKinney-Vento Homeless Assistance Act and a representative of the State child welfare agency responsible for foster care.
(B) MEMBERSHIP- Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including--	
(i) parents of children with disabilities (ages birth through 26);	
(ii) individuals with disabilities;	
(iii) teachers;	
(iv) representatives of institutions of higher education that prepare special education and related services personnel;	
(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);	
(vi) administrators of programs for children with disabilities;	
(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;	
(viii) representatives of private schools and public charter schools;	
(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;	
(x) a representative from the State child welfare agency responsible for foster care; and	
(xi) representatives from the State juvenile and adult corrections agencies.	
(C) SPECIAL RULE- A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).	
(D) DUTIES- The advisory panel shall--	No substantive change.
(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;	
(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;	
(iii) advise the State educational agency in developing evaluations and reporting on data to the	

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Secretary under 20 U.S.C. 1418;	
(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and	
(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.	
(22) SUSPENSION AND EXPULSION RATES- (A) IN GENERAL- The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities-- (i) among local educational agencies in the State; or (ii) compared to such rates for nondisabled children within such agencies. (B) REVIEW AND REVISION OF POLICIES- If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.	Revises the provision to require that data on suspension and expulsion rates also be disaggregated by race and ethnicity.
(23) ACCESS TO INSTRUCTIONAL MATERIALS- (A) IN GENERAL- The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register. (B) RIGHTS OF STATE EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (C) PREPARATION AND DELIVERY OF FILES- If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--	New provision. Requires States to adopt the National Instructional Materials Accessibility Standard for providing instructional materials to blind and other persons with print disabilities in a timely manner after publication of the Standard in the Federal Register. States are not required to coordinate with the National Instructional Materials Access Center, but if they do not, they must provide an assurance to the Secretary that they will provide instructional materials to blind and print disabled person in a timely manner. Specific rules apply to States that do coordinate with the Center. To the maximum extent possible, SEAs must work with the State agency for assistive technology in carrying out these requirements.

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(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or	
(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.	
(D) ASSISTIVE TECHNOLOGY- In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.	
(E) DEFINITIONS- In this paragraph:	
(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER- The term `National Instructional Materials Access Center' means the center established pursuant to 20 U.S.C. 1474(e).	
(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD- The term `National Instructional Materials Accessibility Standard' has the meaning given the term in 20 U.S.C. 1474(e)(3)(A).	
(iii) SPECIALIZED FORMATS- The term `specialized formats' has the meaning given the term in 20 U.S.C. 1474(e)(3)(D).	<p>New provision. States must have in effect policies and procedures designed to prevent inappropriate overidentification or disproportionate representation by race or ethnicity of children with disabilities, including particular disability categories.</p> <p>New provision. States and local agency personnel are prohibited from requiring a child to obtain a prescription for a controlled substance as a condition of attending school, receiving an evaluation, or receiving services under the IDEA. Does not prohibit teachers or other school personnel from <i>sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school or regarding the need for an evaluation for special education or related services.</i></p>
(24) OVERIDENTIFICATION AND DISPROPORTIONALITY- The State has in effect, consistent with the purposes of this title and with 20 U.S.C. 1418(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 20 U.S.C. 1401.	
(25) PROHIBITION ON MANDATORY MEDICATION-	
(A) IN GENERAL- The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of 20 U.S.C. 1414, or receiving services under this title.	
(B) RULE OF CONSTRUCTION- Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).	

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(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES- If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--	No substantive change.
(1) shall comply with any additional requirements of 20 U.S.C. 1413(a), as if such agency were a local educational agency; and	
(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to 20 U.S.C. 1413(a)(2)(A)(i) (relating to excess costs).	
20 U.S.C. 1413. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.	
(a) IN GENERAL- A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:	No substantive change.
(1) CONSISTENCY WITH STATE POLICIES- The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 20 U.S.C. 1412.	No substantive change.
(2) USE OF AMOUNTS-	
(A) IN GENERAL- Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--	
(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;	
(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and	
(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.	
(B) EXCEPTION- Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--	No substantive change.
(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;	
(ii) a decrease in the enrollment of children with disabilities;	
(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of	

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special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child--	
(I) has left the jurisdiction of the agency;	
(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or	
(III) no longer needs such program of special education; or	
(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.	No substantive change.
(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS-	
(i) AMOUNTS IN EXCESS- Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under 20 U.S.C. 1411(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.	
(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA- If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.	
(iii) STATE PROHIBITION- Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under 20 U.S.C. 1416, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.	Replaces prior provision regarding use of certain Federal funds with a new provision that an LEA may reduce the amount of local fiscal effort by not more than 50% of any increase in the amount of its Federal allocation as long as the LEA uses an equal amount of local funds to carry out activities authorized by the ESEA. SEAs are required to prohibit LEAs from using this authority if the LEA is unable to establish and maintain programs of FAPE or if the LEA is the subject of an SEA enforcement action under 20 U.S.C. 1416. IDEA funds that an LEA uses for early intervention services under 20 U.S.C. 1413(f) count toward the total local fiscal effort that an LEA may reduce.
(iv) SPECIAL RULE- The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).	
(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA- Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed--	No substantive change.
(i) the number of children with disabilities participating in the schoolwide program; multiplied by	No substantive change.

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(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by	
(II) the number of children with disabilities in the jurisdiction of that agency.	
(3) PERSONNEL DEVELOPMENT- The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of 20 U.S.C. 1412(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.	No substantive change.
(4) PERMISSIVE USE OF FUNDS-	Provides for additional uses of funds without regard to excess costs and commingling requirements for early intervening services under 20 U.S.C. 1413(f) and to establish and implement cost or risk-sharing funds, consortia or cooperatives for the LEA or groups of LEAs to pay for high cost special education and related services. Also provides that LEAs can use funds to purchase technology for record keeping, data collection and related case management activities of teachers and related services personnel as needed for case management of IEP services. Authority to use up to 5% of the funds for coordinated services is deleted.
(A) USES- Notwithstanding paragraph (2)(A) or 20 U.S.C. 1412(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:	
(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN- For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.	
(ii) EARLY INTERVENING SERVICES- To develop and implement coordinated, early intervening educational services in accordance with subsection (f).	
(iii) HIGH COST EDUCATION AND RELATED SERVICES- To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.	
(B) ADMINISTRATIVE CASE MANAGEMENT- A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.	Language is added to this provision to specify that charter schools of LEAs be treated the same as other schools of the LEAs regarding provision of on-site services and distribution of funds.
(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS- In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--	
(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and	

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(B) provides funds under this part to those charter schools--	
(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and	
(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.	
(6) PURCHASE OF INSTRUCTIONAL MATERIALS-	New provision. Not later than 2 years after enactment of IDEA 2004, an LEA that chooses to coordinate with the National Instructional Materials Access Center must acquire the print materials in the same manner and subject to the same conditions as a SEA under 20 U.S.C. 1412(a)(23). LEAs are not required to coordinate with the Center, and if they do not, they must provide an assurance to the SEA that they will provide instructional materials to blind or print disabled persons in a timely manner.
(A) IN GENERAL- Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under 20 U.S.C. 1412(a)(23).	
(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY- Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.	
(7) INFORMATION FOR STATE EDUCATIONAL AGENCY- The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of 20 U.S.C. 1412(a), information relating to the performance of children with disabilities participating in programs carried out under this part.	No substantive change.
(8) PUBLIC INFORMATION- The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.	No substantive change.
(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES- The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.	New provision. LEAs must cooperate with the Secretary's efforts under section 1308 of the ESEA to ensure linkage of records pertaining to migratory children with disabilities for the purpose of exchanging among States health and educational information on these children.
(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS-	No substantive change.
(1) INITIAL EVALUATIONS-	

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(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.	
(B) REQUEST FOR INITIAL EVALUATION- Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.	New provision. Either a parent, SEA or other State agency or LEA can request an initial evaluation.
(C) PROCEDURES-	Establishes a new Federal default 60-day timeline from receipt of parent consent for initial evaluation until the initial evaluation must be conducted, unless a State has adopted a different timeline.
(i) IN GENERAL- Such initial evaluation shall consist of procedures--	
(I) to determine whether a child is a child with a disability (as defined in 20 U.S.C. 1401) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and	
(II) to determine the educational needs of such child.	Provides that the timeline for initial evaluation will not apply in two situations – if the child moves to a new school district after consent is given but before the evaluation can be completed, as long as the new district is <i>making sufficient progress</i> to complete the evaluation and the parent and LEA agree to a specific time when the evaluation shall be completed, or if the parent repeatedly fails or refuses to produce the child for evaluation.
(ii) EXCEPTION- The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--	
(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in 20 U.S.C. 1401), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or	
(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.	
(D) PARENTAL CONSENT-	No substantive change.
(i) IN GENERAL-	
(I) CONSENT FOR INITIAL EVALUATION- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in 20 U.S.C. 1401 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.	
(II) CONSENT FOR SERVICES- An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain	New provision. Clarifies that public agencies must seek parental consent before providing special education

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informed consent from the parent of such child before providing special education and related services to the child.	services, in addition to seeking consent before evaluation.
<p>(ii) ABSENCE OF CONSENT-</p> <p>(I) FOR INITIAL EVALUATION- If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in 20 U.S.C. 1415, except to the extent inconsistent with State law relating to such parental consent.</p> <p>(II) FOR SERVICES- If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in 20 U.S.C. 1415.</p> <p>(III) EFFECT ON AGENCY OBLIGATIONS- If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--</p> <p>(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and</p> <p>(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.</p>	<p>New provision. Allows public agencies to use due process to seek authority to do an evaluation if parents refuse to consent for the evaluation or fail to respond to requests for consent for evaluation, but provides that agencies may not use due process to seek to provide services if parents have failed to provide consent for services. If parents refuse consent for services, the agency will not be considered to have failed to provide FAPE to the child and shall not be required to convene IEP meetings about the child.</p>
<p>(iii) CONSENT FOR WARDS OF THE STATE-</p> <p>(I) IN GENERAL- If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in 20 U.S.C. 1401) of the child for an initial evaluation to determine whether the child is a child with a disability.</p> <p>(II) EXCEPTION- The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--</p> <p>(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;</p> <p>(bb) the rights of the parents of the child have been terminated in accordance with State law; or</p>	<p>New provision. Provides that agencies shall make reasonable efforts to obtain informed consent prior to an initial evaluation if the child is a ward of the State and not living with the child's parents, but is not required to obtain consent if the agency, despite reasonable efforts, cannot locate the child's parents; the rights of the parents have been terminated under State law; or the rights of the parent to make educational decisions has been subrogated under State law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child.</p>

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(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.	
(E) RULE OF CONSTRUCTION- The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.	New provision. Screenings of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special education and related services.
(2) REEVALUATIONS- (A) IN GENERAL- A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--	Revised to provide that reevaluations occur if the LEA determines that the educational and related services needs, including improved academic achievement and functional performance of the child warrant or if the child's parents or teacher request one, and limits reevaluations to not more than once a year, unless parents and LEA agree otherwise and at least once every 3 years, unless parents and LEA agree otherwise.
(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or	
(ii) if the child's parents or teacher requests a reevaluation.	
(B) LIMITATION- A reevaluation conducted under subparagraph (A) shall occur--	
(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and	
(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.	
(b) EVALUATION PROCEDURES- (1) NOTICE- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of 20 U.S.C. 1415, that describes any evaluation procedures such agency proposes to conduct.	No substantive change.
(2) CONDUCT OF EVALUATION- In conducting the evaluation, the local educational agency shall--	
(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--	Revised to specify that the evaluation gather academic information about the child.
(i) whether the child is a child with a disability; and	No substantive change.
(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for	

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preschool children, to participate in appropriate activities;	
(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and	
(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.	
(3) ADDITIONAL REQUIREMENTS- Each local educational agency shall ensure that-- (A) assessments and other evaluation materials used to assess a child under this section--	No substantive change.
(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;	No substantive change.
(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;	Revised to provide that evaluations be done in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer [prior law said evaluation must be done in the 'native language or other mode of communication' of the child]; to apply standards of validity, reliability, and administration by trained personnel in accordance with applicable instructions by assessment producers to all assessment procedures [prior law applied these standards only to standardized tests]; and to require coordination in the administration of assessments between school districts if a child moves from one district to another in the same academic year.
(iii) are used for purposes for which the assessments or measures are valid and reliable;	
(iv) are administered by trained and knowledgeable personnel; and	
(v) are administered in accordance with any instructions provided by the producer of such assessments;	
(B) the child is assessed in all areas of suspected disability;	
(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and	
(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.	
(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED- Upon completion of the administration of assessments and other evaluation measures--	No substantive change.
(A) the determination of whether the child is a child with a disability as defined in 20 U.S.C. 1401(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and	Expanded to include a determination of the educational needs of the child.
(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.	
(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION- In making a determination of eligibility under	No substantive change.

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paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--	
(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);	Revised to include a specific reference to the <i>essential components of reading instruction</i> as defined in the Reading First program. Section 1208(3) of the ESEA states the term essential components of reading instruction' means explicit and systematic instruction in — (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies.
(B) lack of instruction in math; or	
(C) limited English proficiency.	
(6) SPECIFIC LEARNING DISABILITIES	New provision. Provides that LEAs are not required to consider whether a child has a severe discrepancy between achievement and intellectual ability when determining whether a child has a learning disability and permitting LEAs to use a response to a research-based intervention as a part of an evaluation process.
(A) IN GENERAL.- Notwithstanding 20 U.S.C. 1407(b), when determining whether a child has a specific learning disability as defined in 20 U.S.C. 1401, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.	
(B) ADDITIONAL AUTHORITY.- In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).	
(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS-	No substantive change.
(1) REVIEW OF EXISTING EVALUATION DATA- As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--	
(A) review existing evaluation data on the child, including--	
(i) evaluations and information provided by the parents of the child;	
(ii) current classroom-based, local, or State assessments, and classroom-based observations; and	
(iii) observations by teachers and related services providers; and	
(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--	
(i) whether the child is a child with a disability as defined in 20 U.S.C. 1401(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;	Revised to add references to educational needs of the child.

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(ii) the present levels of academic achievement and related developmental needs of the child;	Revised to require consideration of whether additional data are needed about the child's present levels of <i>academic achievement and related developmental needs</i> [prior law referred to present levels of performance and educational needs].
(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and	No substantive change.
(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.	No substantive change.
(2) SOURCE OF DATA- The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).	No substantive change.
(3) PARENTAL CONSENT- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.	
(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED- If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--	Revised to add reference to child's educational needs.
(A) shall notify the child's parents of--	
(i) that determination and the reasons for the determination; and	
(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and	Revised to expand the parent's right to receive an evaluation about the child's educational needs, in addition to whether the child continues to be a child with a disability.
(B) shall not be required to conduct such an assessment unless requested to by the child's parents.	No substantive change.
(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY-	No substantive change.
(A) IN GENERAL- Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a	

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child with a disability.	
(B) EXCEPTION-	New provision. Clarifies that an evaluation is not required before terminating a child's eligibility due to graduation with a regular diploma or due to exceeding the age of eligibility for FAPE. If a child's eligibility ends due to either of these circumstances, the LEA shall provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals.
(i) IN GENERAL- The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.	
(ii) SUMMARY OF PERFORMANCE- For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.	
(d) INDIVIDUALIZED EDUCATION PROGRAMS-	No substantive change.
(1) DEFINITIONS- In this title:	
(A) INDIVIDUALIZED EDUCATION PROGRAM-	
(i) IN GENERAL- The term `individualized education program' or `IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--	
(I) a statement of the child's present levels of academic achievement and functional performance, including--	Revised to require a statement of present levels of <i>academic achievement and functional performance</i> [prior law referred to present levels of educational performance].
(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;	Revised to change general curriculum to <i>general education curriculum</i> .
(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and	No substantive change.
(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;	Revised to require, for children with disabilities taking alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives [prior law required a statement of benchmarks or short-term objectives as a part of the statement of annual goals for all children with disabilities].
(II) a statement of measurable annual goals, including academic and functional goals, designed to--	Revised to refer to both academic and functional goals, to delete the requirement for the use of short-term

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(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and	objectives or benchmarks for all children with disabilities, and to refer to <i>general education curriculum</i> .
(bb) meet each of the child's other educational needs that result from the child's disability;	No substantive change.
(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;	Revised to require a statement of how the child's progress toward annual goals will be measured and when periodic reports on progress will be provided (such as quarterly or other periodic reports concurrent with regular report cards) [prior law referred to periodic reports at least as often as other parents are informed of progress].
(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--	Revised to provide that the statement of special education and related services and supplementary aids and services be <i>based on peer-reviewed research to the extent practicable</i> and to refer to <i>general education curriculum</i> .
(aa) to advance appropriately toward attaining the annual goals;	
(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and	
(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;	No substantive change.
(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);	No substantive change.
(VI)	Revised to refer to a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments, and if the IEP team determines that the child shall take an alternate assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.
(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with 20 U.S.C. 1412(a)(16)(A); and	
(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--	
(AA) the child cannot participate in the regular assessment; and	

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(BB) the particular alternate assessment selected is appropriate for the child;	
(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and	No substantive change.
(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter-- (aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;	Replaces the two transition services requirements with one provision that, beginning not later than the IEP in effect when the child turns 16 and updated annually thereafter, the IEP include a statement of <i>appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, and the transition services (including courses of study) needed to assist the child in reaching those goals.</i>
(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and	
(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under 20 U.S.C. 1415(m).	Requires that the IEP include a statement that the child has been informed of rights transferring at the age of majority at least one year before rights transfer.
(ii) RULE OF CONSTRUCTION- Nothing in this section shall be construed to require--	Provides that nothing be construed to require that IEPs include more than what is explicitly provided for in 20 U.S.C. 1414 as well as the provision in prior law [at 20 U.S.C. 1414(e)] that an IEP team need not include information under a component of an IEP that is already included elsewhere in the IEP.
(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and	
(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.	
(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM- The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of--	No substantive change.
(i) the parents of a child with a disability;	Revises the IEP team to include <i>not less than 1</i> regular education teacher and <i>not less than 1</i> special education teacher [prior law referred to "at least one" in both places.]
(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);	
(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;	
(iv) a representative of the local educational agency who--	No substantive change.

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(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;	
(II) is knowledgeable about the general education curriculum; and	
(III) is knowledgeable about the availability of resources of the local educational agency;	
(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);	
(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and	No substantive change.
(vii) whenever appropriate, the child with a disability.	
(C) IEP TEAM ATTENDANCE-	New provision. An IEP team member may be excused from attending a meeting if the parents and agency agree that the individual's attendance is not necessary because that member's curriculum area or related service is not being discussed.
(i) ATTENDANCE NOT NECESSARY- A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.	
(ii) EXCUSAL- A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--	New provisions. Permits a team member to be excused from attending an IEP meeting that involves a modification discussion of the member's curriculum area or related service if the parent (in writing) and agency agree to the excusal and the excused member submits written input prior to the meeting.
(I) the parent and the local educational agency consent to the excusal; and	
(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.	
(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED- A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.	
(D) IEP TEAM TRANSITION- In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.	New provision. The public agency, at the request of the parent, must invite the Part C service coordinator or other representative of the Part C program to the IEP meeting for a child transitioning from Part C to Part B services.
(2) REQUIREMENT THAT PROGRAM BE IN EFFECT-	No substantive change.
(A) IN GENERAL- At the beginning of each school year, each local educational agency, State educational	

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agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).	
(B) PROGRAM FOR CHILD AGED 3 THROUGH 5- In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in 20 U.S.C. 1436, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is--	Adds that the IEP team shall consider a child's IFSP when developing an appropriate program for a child transferring from the Part C program to the Part B program.
(i) consistent with State policy; and	
(ii) agreed to by the agency and the child's parents.	
(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS- (i) IN GENERAL- (I) TRANSFER WITHIN THE SAME STATE- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.	New provision. Requires that, for children transferring school districts within the same state, the new LEA provide FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA either adopts the prior IEP or develops a new IEP.
(II) TRANSFER OUTSIDE STATE- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.	New provision. Requires that, for children transferring from one State to another, the new LEA provide FAPE, including services consistent with the previous district's IEP, in consultation with the parents, until the new LEA conducts an evaluation, and if needed, develops a new IEP.
(ii) TRANSMITTAL OF RECORDS- To facilitate the transition for a child described in clause (i)--	New provision. Requires that new LEAs <i>take reasonable steps to promptly obtain the child's records</i> and the 'old' district take reasonable steps to promptly respond to those requests.
(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and	

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(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.	
(3) DEVELOPMENT OF IEP-	No substantive change except the one immediately below.
(A) IN GENERAL- In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--	
(i) the strengths of the child;	
(ii) the concerns of the parents for enhancing the education of their child;	
(iii) the results of the initial evaluation or most recent evaluation of the child; and	Adds that the IEP team consider the academic, developmental, and functional needs of the child.
(iv) the academic, developmental, and functional needs of the child.	
(B) CONSIDERATION OF SPECIAL FACTORS- The IEP Team shall--	No substantive change.
(i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;	
(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;	No substantive change.
(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;	
(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and	No substantive change.
(v) consider whether the child needs assistive technology devices and services.	
(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER- A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and	No substantive change.

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services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).	
(D) AGREEMENT- In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.	New provision. Changes to the IEP, after the annual IEP meeting, can occur without a meeting, if the parents and LEA agree and develop a written document to amend or modify the IEP.
(E) CONSOLIDATION OF IEP TEAM MEETINGS- To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.	New provision. LEAs should encourage the consolidation of reevaluation meetings and other IEP meetings.
(F) AMENDMENTS- Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.	New provision. Clarifies that amendments to IEPs can be made by the entire IEP team or by just the parent and LEA (as in (d)(e)(D)) and that the IEP can be amended, rather than completely redrafted, unless the parent requests a revised copy with the amendments incorporated.
(4) REVIEW AND REVISION OF IEP-	No substantive change.
(A) IN GENERAL- The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--	
(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and	Revised to refer to general education curriculum rather than 'general curriculum' in prior law.
(ii) revises the IEP as appropriate to address--	
(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;	
(II) the results of any reevaluation conducted under this section;	
(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);	
(IV) the child's anticipated needs; or	
(V) other matters.	
(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER- A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.	

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(5) MULTI-YEAR IEP DEMONSTRATION-	New provision. Authorizes the Secretary to grant up to 15 States the ability to offer comprehensive multi-year IEPs of not more than 3 years in length, designed to coincide with natural transition points for the child. States must submit proposals that meet certain statutory standards, including that participation in the multi-year IEP demonstration is optional for parents. The Secretary must submit annual reports to Congress beginning 2 years after enactment of the reauthorization on the effectiveness of the demonstrations on reducing paperwork and noninstructional teacher time and improving positive outcomes for children with disabilities.
(A) PILOT PROGRAM-	
(i) PURPOSE- The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.	
(ii) AUTHORIZATION- In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).	
(iii) PROPOSAL-	
(I) IN GENERAL- A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.	
(II) CONTENT- The proposal shall include--	
(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;	
(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;	
(cc) a list of required elements for each multi-year IEP, including--	
(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and	
(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and	
(dd) a description of the process for the review and revision of each multi-year IEP, including--	
(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;	
(BB) in years other than a child's natural transition points, an annual review of	

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the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;	
(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and	
(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.	
(B) REPORT- Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including--	
(i) reducing--	
(I) the paperwork burden on teachers, principals, administrators, and related service providers; and	
(II) noninstructional time spent by teachers in complying with this part;	
(ii) enhancing longer-term educational planning;	
(iii) improving positive outcomes for children with disabilities;	
(iv) promoting collaboration between IEP Team members; and	
(v) ensuring satisfaction of family members.	
(C) DEFINITION- In this paragraph, the term `natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.	
(6) FAILURE TO MEET TRANSITION OBJECTIVES- If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with	No substantive change.

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PL 108-446	Description of Changes
paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.	
(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS-	No substantive change.
(A) IN GENERAL- The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:	
(i) The requirements contained in 20 U.S.C. 1412(a)(16) and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).	
(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children's age, before such children will be released from prison.	
(B) ADDITIONAL REQUIREMENT- If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of 20 U.S.C. 1412(a)(5)(A) and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.	
20 U.S.C. 1415. PROCEDURAL SAFEGUARDS.	
(a) ESTABLISHMENT OF PROCEDURES- Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.	No substantive change.
(b) TYPES OF PROCEDURES- The procedures required by this section shall include the following:	No substantive change.
(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.	
(2)	No substantive change.
(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--	

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(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and	New provision. For a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's care, provided that person meets the non-employee standard.
(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.	New provision. For an unaccompanied homeless youth, the local educational agency must appoint a surrogate parent. Section 745(6) of the McKinney-Vento Homeless Assistance Act states the term 'unaccompanied youth' includes a youth not in the physical custody of a parent or guardian.
(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.	New provision. Requires that the State make reasonable efforts to ensure appointment of a surrogate within 30 days after a determination that the child needs a surrogate.
(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency--	No substantive change.
(A) proposes to initiate or change; or	
(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.	
(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.	No substantive change.
(5) An opportunity for mediation, in accordance with subsection (e).	No substantive change.
(6) An opportunity for any party to present a complaint--	Revised to provide that <i>any party</i> has a right to a hearing [prior law guaranteed that right only to parents] and adds a new provision that a request for a hearing be filed within two years of when the parents or agency knew or should have known of the alleged violation, unless the State has an explicit timeline for presenting complaints under Part B.
(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and	
(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.	
(7)	Revises the content of this notice to refer to available

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(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)--	contact information for homeless children and adds a new requirement that the party or their attorney must file the notice before a party can have a due process hearing.
(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and	
(ii) that shall include--	
(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;	
(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;	
(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and	
(IV) a proposed resolution of the problem to the extent known and available to the party at the time.	
(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).	
(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.	Revised to clarify that States must provide a model form to assist parents in filing a due process complaint and a due process complaint notice.
(c) NOTIFICATION REQUIREMENTS-	No substantive change.
(1) CONTENT OF PRIOR WRITTEN NOTICE- The notice required by subsection (b)(3) shall include--	
(A) a description of the action proposed or refused by the agency;	
(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;	
(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;	
(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;	
(E) a description of other options considered by the IEP Team and the reason why those options were	

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PL 108-446	Description of Changes
rejected; and	
(F) a description of the factors that are relevant to the agency's proposal or refusal.	
(2) DUE PROCESS COMPLAINT NOTICE-	New and detailed requirements that a due process complaint notice be considered to be sufficient unless the receiving party notifies the hearing officer and the complainant, within 15 days of receipt, that the notice does not meet the required content requirements; that an agency provide prior written notice within 10 days if the agency has not provided prior written notice about the issues in the complaint; that a non-complaining party respond within 10 days specifically addressing the issues in the complaint; that a hearing officer make a determination about sufficiency of the due process complaint notice within 5 days; that a complaint notice may be amended with the written consent of the other party and a resolution meeting; that a hearing officer can grant permission to amend a due process complaint notice, but not within 5 days of the due process hearing; and that the due process hearing timelines recommence upon the filing of an amended notice.
(A) COMPLAINT- The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).	
(B) RESPONSE TO COMPLAINT-	
(i) LOCAL EDUCATIONAL AGENCY RESPONSE-	
(I) IN GENERAL- If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--	
(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;	
(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;	
(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and	
(dd) a description of the factors that are relevant to the agency's proposal or refusal.	
(II) SUFFICIENCY- A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.	
(ii) OTHER PARTY RESPONSE- Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.	
(C) TIMING- The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.	
(D) DETERMINATION- Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such	

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determination.	
(E) AMENDED COMPLAINT NOTICE-	
(i) IN GENERAL- A party may amend its due process complaint notice only if--	
(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or	
(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.	
(ii) APPLICABLE TIMELINE- The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).	
(d) PROCEDURAL SAFEGUARDS NOTICE-	
(1) IN GENERAL-	Revised to provide that procedural safeguards notice be given to parents only one a year, except that a copy must also be given to parents on initial referral, or a parental request, for evaluation, the initial filing of a due process hearing request, and when requested by the parent.
(A) COPY TO PARENTS- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--	
(i) upon initial referral or parental request for evaluation;	
(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and	
(iii) upon request by a parent.	
(B) INTERNET WEBSITE- A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.	A new provision noting that a local educational agency may place a current copy of the procedural safeguards on its Internet website.
(2) CONTENTS- The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--	Revised to add elements related to the time period for filing due process complaints, the agency's opportunity to resolve complaints, the availability of mediation, and the time period for filing lawsuits.
(A) independent educational evaluation;	
(B) prior written notice;	
(C) parental consent;	
(D) access to educational records;	

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<p>(E) the opportunity to present and resolve complaints, including--</p> <p>(i) the time period in which to make a complaint;</p> <p>(ii) the opportunity for the agency to resolve the complaint; and</p> <p>(iii) the availability of mediation;</p> <p>(F) the child's placement during pendency of due process proceedings;</p> <p>(G) procedures for students who are subject to placement in an interim alternative educational setting;</p> <p>(H) requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(J) State-level appeals (if applicable in that State);</p> <p>(K) civil actions, including the time period in which to file such actions; and</p> <p>(L) attorneys' fees.</p>	
<p>(e) MEDIATION-</p> <p>(1) IN GENERAL- Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.</p>	Revised to require that mediation be available to resolve any dispute [prior law only required mediation to be available to resolve matters that were the subject of a due process hearing request].
<p>(2) REQUIREMENTS- Such procedures shall meet the following requirements:</p> <p>(A) The procedures shall ensure that the mediation process--</p> <p>(i) is voluntary on the part of the parties;</p> <p>(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and</p> <p>(iii) s conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p> <p>(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY- A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--</p>	No substantive change.

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(i) a parent training and information center or community parent resource center in the State established under 20 U.S.C. 1471 or 1472; or	
(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.	
(C) LIST OF QUALIFIED MEDIATORS- The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.	
(D) COSTS- The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).	
(E) SCHEDULING AND LOCATION- Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.	
(F) WRITTEN AGREEMENT- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--	New provision. Requires that mediation agreements be in writing, signed by both the parents and agency representative, include a clause that discussions during mediation remain confidential and not be used as evidence in subsequent due process hearings or court actions, and that the agreements be enforceable in any State court of competent jurisdiction or in Federal district court.
(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;	
(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and	
(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.	
(G) MEDIATION DISCUSSIONS- Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.	
(f) IMPARTIAL DUE PROCESS HEARING- (1) IN GENERAL- (A) HEARING- Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.	Revised to clarify that either the parents or the LEA can request a due process hearing.
(B) RESOLUTION SESSION-	New provision. Requires that, prior to a due process hearing, the LEA convene a meeting with the parents

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(i) PRELIMINARY MEETING- Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--	and the relevant member(s) of the IEP team with specific knowledge of the facts in the complaint within 15 days of receipt of the complaint, to discuss and attempt to resolve the complaint. New provision. The meeting must include someone from the agency with decision-making authority on behalf of the agency and may not include an LEA attorney unless the parents bring an attorney. The parties may agree in writing to waive the meeting or agree to use mediation.
(I) within 15 days of receiving notice of the parents' complaint;	
(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;	
(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and	
(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).	
(ii) HEARING- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.	New provision. If the LEA has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur.
(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--	New provision. If there is a resolution, the parties shall execute a written, signed document that is enforceable in any State court of competent jurisdiction or in Federal district court.
(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and	
(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.	
(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.	New provision. A party can void a written agreement within 3 business days.
(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS- (A) IN GENERAL- Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.	No substantive change.

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(B) FAILURE TO DISCLOSE- A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.	
(3) LIMITATIONS ON HEARING-	Revised to add requirements that a hearing officer cannot have personal or professional interests that conflict with the person's objectivity; possess knowledge of and the ability to understand the statute, regulations and court interpretations of the law and regulations; possess the knowledge and ability to conduct hearings in accordance with standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with standard legal practice.
(A) PERSON CONDUCTING HEARING- A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--	
(i) not be--	
(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or	
(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;	
(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts; standard legal practice; and	
(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate,	
(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.	
(B) SUBJECT MATTER OF HEARING- The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.	New provision. Requires that a party requesting a due process hearing cannot raise issues in a hearing that were not raised in the due process complaint notice, unless the other party agrees.
(C) TIMELINE FOR REQUESTING HEARING- A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.	New provision. Creates a Federal default 2-year time limit, from when the parent or agency knew or should have known of the alleged violation, to file a request for a due process hearing, that applies unless the State has established an explicit timeline for requesting due process under Part B.
(D) EXCEPTIONS TO THE TIMELINE- The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--	New provision. The timeline shall not apply to a parent if the parent was prevented from filing by <i>specific misrepresentations by the [LEA] that it had resolved the problem</i> or the LEA withheld information that the parent
(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or	

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(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.	had a right to under Part B.
(E) DECISION OF HEARING OFFICER-	New provision. Adds new requirements that hearing decisions be based on a determination whether the child received FAPE and that procedural inadequacies can result in a finding that FAPE was not provided only if those inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making regarding FAPE, or caused a deprivation of educational benefits.
(i) IN GENERAL- Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.	
(ii) PROCEDURAL ISSUES- In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--	
(I) impeded the child's right to a free appropriate public education;	
(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or	
(III) caused a deprivation of educational benefits.	
(iii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.	
(F) RULE OF CONSTRUCTION- Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.	New provision. Nothing in 20 U.S.C. 1415(f) should be construed to prevent a parent from filing a complaint with the SEA under the State complaint procedures.
(g) APPEAL-	No substantive change.
(1) IN GENERAL- If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.	
(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION- The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.	No substantive change.
(h) SAFEGUARDS- Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded--	No substantive change.
(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;	

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(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;	
(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and	
(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions--	
(A) shall be made available to the public consistent with the requirements of 20 U.S.C. 1417(b) (relating to the confidentiality of data, information, and records); and	
(B) shall be transmitted to the advisory panel established pursuant to 20 U.S.C. 1412(a)(21).	
(i) ADMINISTRATIVE PROCEDURES-	No substantive change.
(1) IN GENERAL-	
(A) DECISION MADE IN HEARING- A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).	
(B) DECISION MADE AT APPEAL- A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).	
(2) RIGHT TO BRING CIVIL ACTION-	No substantive change.
(A) IN GENERAL- Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.	
(B) LIMITATION- The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.	New provision. Creates a Federal default timeline of 90 days to appeal final State due process decisions to court, that applies unless the State has an explicit timeline for bringing such actions under Part B.
(C) ADDITIONAL REQUIREMENTS- In any action brought under this paragraph, the court--	No substantive change.
(i) shall receive the records of the administrative proceedings;	
(ii) shall hear additional evidence at the request of a party; and	
(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.	

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(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES-	No substantive change.
(A) IN GENERAL- The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.	
(B) AWARD OF ATTORNEYS' FEES-	No substantive change.
(i) IN GENERAL- In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--	
(I) to a prevailing party who is the parent of a child with a disability;	
(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or	New provision. Incorporates, into IDEA, the standards of Fed. R. Civ. Pro. 11 and case law providing for public agencies to recover attorneys' fees from parents' attorneys if the case <i>was frivolous, unreasonable or without foundation or was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the costs of litigation.</i>
(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.	
(ii) RULE OF CONSTRUCTION- Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.	New provision. Nothing in 20 U.S.C. 1415(i)(3) should be construed to affect the attorneys' fees limitation in the FY 2005 DC appropriations bill.
(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES- Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.	No substantive change.
(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES-	No substantive change.
(i) N GENERAL- Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if--	
(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;	
(II) the offer is not accepted within 10 days; and	

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(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.	
(ii) IEP TEAM MEETINGS- Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).	No substantive change.
(iii) OPPORTUNITY TO RESOLVE COMPLAINTS- A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered--	New provision. Attorneys' fees are not available for the resolution session meetings required by 20 U.S.C. 1415(f)(1)(B)(I).
(I) a meeting convened as a result of an administrative hearing or judicial action; or	
(II) an administrative hearing or judicial action for purposes of this paragraph.	
(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS- Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.	No substantive change.
(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES- Except as provided in subparagraph (G), whenever the court finds that--	No substantive change.
(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;	
(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;	
(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or	
(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.	
(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES- The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.	No substantive change.
(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT- Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the	No substantive change.

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child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.	
(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING- (1) AUTHORITY OF SCHOOL PERSONNEL- (A) CASE-BY-CASE DETERMINATION- School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.	New provision. Permits school personnel to consider <i>any unique circumstances on a case-by-case basis</i> when deciding to order a change in placement for a child violating a school conduct code.
(B) AUTHORITY- School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).	Essentially the same as prior (k)(1)(A)(I) permitting school personnel to move a child with a disability for not more than 10 school days for any violation of a school code of conduct.
(C) ADDITIONAL AUTHORITY- If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in 20 U.S.C. 1412(a)(1) although it may be provided in an interim alternative educational setting.	Similar to prior (k)(5)(A), permitting school personnel to discipline a child with a disability for the same length of time and in the same manner as nondisabled children for behavior found not to be a manifestation of the child's disability, except that the educational services must continue, although in another setting.
(D) SERVICES- A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall-- (i) continue to receive educational services, as provided in 20 U.S.C. 1412(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and	Similar to prior (k)(1)(A) and (B) and current regulations, that any child with a disability removed from the current placement for more than 10 consecutive school days must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum although in another setting, and continue to receive the services on the child's IEP and receive, as appropriate, functional behavioral assessment, behavioral interventions and modifications that are designed to address the behavior so that it does not recur.
(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.	
(E) MANIFESTATION DETERMINATION- (i) IN GENERAL- Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant	Establishes a new standard for manifestation determinations – within 10 school days of any decision to change the placement of a child for discipline, the LEA, parent, and relevant members of the IEP team (determined by the parent and LEA) shall review all information to determine (1) <i>if the conduct in question</i>

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information provided by the parents to determine--	<i>was caused by, or had a direct and substantial relationship to, the child's disability; or (2) if the conduct in question was the direct result of the [LEA's] failure to implement the IEP.</i>
(ii) MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.	
(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or	
(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.	
(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION- If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--	New provision. If behavior was a manifestation of the child's disability, the IEP team must conduct a functional behavioral assessment and implement a behavioral intervention plan for the child, or reviews an existing plan and modifies it as necessary to address the behavior. This provision also clarifies, as in current regulations, that if behavior is a manifestation, the child is returned to the placement from which he or she was removed for discipline, unless the parent and LEA agree otherwise.
(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);	
(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and	
(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.	
(G) SPECIAL CIRCUMSTANCES- School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--	Similar to prior (k)(1)(A)(ii), permitting school personnel to remove a child with a disability to an interim alternative educational setting, without regard to the manifestation determination, for not more than 45 <i>school</i> days for weapons and drugs offenses or if the child with a disability <i>has inflicted serious bodily injury upon another person</i> at school. <i>Serious bodily injury</i> is defined to mean a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;	
(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or	
(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.	
(H) NOTIFICATION- Not later than the date on which the decision to take disciplinary action is made, the	New provision. Similar to current regulations, that not

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local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.	later than the date of the decision to take disciplinary action, the LEA shall notify the parents of the decision and of the procedural safeguards available.
(2) DETERMINATION OF SETTING- The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.	Similar to prior (k)(3)(A), providing that the interim alternative educational setting, for removals of more than 10 school days for behavior that is not a manifestation or subject to 45-school-day removal, is determined by the IEP team.
(3) APPEAL- (A) IN GENERAL- The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.	Similar to prior (k)(2) and (6) that parents who disagree with a discipline decision regarding placement or manifestation and LEAs that believe that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may request a hearing.
(B) AUTHORITY OF HEARING OFFICER- (i) IN GENERAL- A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).	Provides that hearing officers hear appeals and can order a change in placement, return the child to the placement from which the child was removed, or order a change in placement for not more than 45 school days if the child is substantially likely to injure self or others in current placement.
(ii) CHANGE OF PLACEMENT ORDER- In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--	
(I) return a child with a disability to the placement from which the child was removed; or	
(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.	
(4) PLACEMENT DURING APPEALS- When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--	Similar to prior (k)(7)(A) that during an appeal, the child remains in the interim alternative educational setting until the decision of the hearing officer or expiration of the period of removal, whichever occurs first. This provision also requires that the SEA or LEA arrange for an expedited hearing, which shall occur within 20 school days of the request and result in a determination within 10 school days after the hearing.
(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and	
(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within	

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20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.	
(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES-	A revision to prior (k)(8) to clarify that an LEA will be deemed to have a basis of knowledge that the child might be eligible if (1) the parent has expressed concern <i>in writing to supervisory or administrative personnel of the agency or to a teacher of the child</i> that the child needs special education; (2) the parent has requested an evaluation to determine eligibility; or (3) the teacher or other personnel had <i>expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the agency or other supervisory personnel.</i>
(A) IN GENERAL- A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.	
(B) BASIS OF KNOWLEDGE- A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred-	
(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;	
(ii) the parent of the child has requested an evaluation of the child pursuant to 20 U.S.C. 1414(a)(1)(B); or	
(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.	
(C) EXCEPTION- A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to 20 U.S.C. 1414 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.	Incorporates current regulatory language that an LEA will not be deemed to have a basis of knowledge if the parent has not allowed an evaluation or has refused services under Part B.
(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE-	No substantive change.
(i) IN GENERAL- If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).	
(ii) LIMITATIONS- If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and	No substantive change.

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information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.	
(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES-	Same as prior law 20 U.S.C. 1415(k)(9).
(A) RULE OF CONSTRUCTION- Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.	
(B) TRANSMITTAL OF RECORDS- An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.	
(7) DEFINITIONS- In this subsection:	Add to prior (k)(10) definitions of 'controlled substance', 'illegal drug' and 'weapon', a new definition of 'serious bodily injury' that means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
(A) CONTROLLED SUBSTANCE- The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).	
(B) ILLEGAL DRUG- The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.	
(C) WEAPON- The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.	
(D) SERIOUS BODILY INJURY- The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.	
(l) RULE OF CONSTRUCTION- Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.	No substantive change.
(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY-	No substantive change.
(1) IN GENERAL- A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--	

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(A) the agency shall provide any notice required by this section to both the individual and the parents;	
(B) all other rights accorded to parents under this part transfer to the child;	
(C) the agency shall notify the individual and the parents of the transfer of rights; and	
(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.	
(2) SPECIAL RULE- If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.	No substantive change.
(n) ELECTRONIC MAIL- A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.	New provision. Parents can elect to receive notices required by 20 U.S.C. 1415 through email, if the agency makes such option available.
(o) SEPARATE COMPLAINT- Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.	New provision. Clarifies that nothing in 20 U.S.C. 1415 prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.
20 U.S.C. 1417. ADMINISTRATION.	
(c) CONFIDENTIALITY- The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.	No substantive change.
20 U.S.C. 1418. PROGRAM INFORMATION.	
(d) DISPROPORTIONALITY-	Adds to prior 20 U.S.C. 1418(c) a requirement that States examine data at both the State and LEA levels [prior law just said 'in the State' and did not require examination of LEA data] and determine whether disproportionality on the basis of race and ethnicity is occurring in the incidence, duration and type of disciplinary actions, in addition to identification and placement as children with disabilities.
(1) IN GENERAL- Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to--	
(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 20 U.S.C. 1401(3);	
(B) the placement in particular educational settings of such children; and	

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(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.	
(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES- In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall--	Adds to the prior law, requirements regarding review of policies and procedures when significant disproportionality is identified. An LEA identified as significantly disproportionate must reserve the maximum amount of funds under 20 U.S.C. 1413(f) to provide coordinated early intervening services to children in the LEA, particularly from the group overidentified, and that the LEA report publicly on the revision of policies, practices and procedures.
(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;	
(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under 20 U.S.C. 1413(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and	
(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).	